

REMARKS

This Election and Amendment is in response to the Office Action, dated December 13, 2010 ("Office Action"). Claims 1-40 are pending in the instant application. No new matter is added. Examination of the claims in view of the ensuing remarks is respectfully requested.

In the Office Action, the Examiner alleges and defines subgenera as follows:

G1: the composition comprises one and only one polypeptide, and no other compounds is present in the composition;

G2: the composition comprises two or more polypeptides, and no other compound is present in the composition;

G3: the composition comprises one and only one polypeptide, and at least one other non-peptide compound (or pharmaceutically acceptable vehicle) is present in the composition;

G4: the composition comprises two or more polypeptides, and at least one other non-peptide compound (or pharmaceutically acceptable vehicle) is present in the composition;

G5: the polypeptide present in the composition is formula I;

G6: the polypeptide present in the composition is formula IV; and

G7: the polypeptide present in the composition is neither of formula I nor of formula IV.

In the Office Action, the Examiner requires restriction under 35 U.S.C. §121 to the following groups of claims:

(1) Claims 1-24, 29, 35, 36, 38, and 39 drawn to a method of treating bacterial infection.

(2) Claims 25 and 27, drawn to a polypeptide comprising a repeat of apoE141-149, or a medicament comprising same.

(3) Claims 26 and 37, drawn to a polypeptide comprising any of SEQ ID NOs: 3, 4, 67, 68, 94, or 95, or a medicament comprising same.

(4) Claims 30 and 40, drawn to a polynucleotide.

(5) Claims 31-33, drawn to a method of preventing or "treating" a contamination.

(6) Claim 34, drawn to a contact lens coated with a peptide.

Additionally, the Examiner requires restriction to species as set forth in the Office Action. In the event Group 1 is elected, election is required of each of the following:

(a) one of G1, G2, G3 or G4;

(b) a specific bacteria that is causing the infection in the elected method;

(c) one of G5, G6, or G7;

(d) in the event G5 is elected, further election is required of each of the following that is present in formula 1: a specific, a, b, c, x, y, z, a, b, c, x, y, and z (Applicants suspect that the second set of a, b, c, x, y, z, was intended to be a', b', c', x', y' and z');

(e) in the event G5 has been elected, further election is required of a specific and fully defined polypeptide in which each amino acid is identified, and which peptide is described without open-ended language such as "comprising" or "containing";

(f) in the event that G6 is elected, further election is required of each of the following that is present in formula IV: a specific, a, b, c, x, y, z, a, b, c, x, y, and z (Applicants suspect that the second set of a, b, c, x, y, z, was intended to be a', b', c', x', y' and z');

(g) in the event G6 has been elected, further election is required of a specific and fully defined polypeptide in which each amino acid is identified, and which peptide is described without open-ended language such as "comprising" or "containing"; and

(h) in the event that G7 is elected, further election is required of a specific and fully defined polypeptide in which each amino acid is identified, and which peptide is described without open-ended language such as "comprising" or "containing."

The Examiner similarly requires various further elections in the event Group 2, Group 3, Group 4, Group 5 or Group 6 is elected as set forth of record.

Applicants hereby elect **Group 1**, which encompasses claims **1-24, 29, 35, 36, 38, and 39**, for prosecution on the merits. Applicants further elect the alleged species as follows:

(a) G3;

(b) *Pseudomonadales*;

(c) G5

(d) a is R; b is K; c is W; x is W; y is W; z is W; a' is R; b' is K; c' is W; x' is W; y' is W; and z' is deleted;

(e) the peptide: WRKWRKRWWWRKWRKRWW (SEQ ID NO. 7);

(f) not applicable;

(g) not applicable; and

(h) not applicable.

This **species** election reads on **claims 1-15, 35, and 38**.

Traversal for Restriction Requirement:

The foregoing election notwithstanding, Applicants respectfully traverse the species election and submit that it is improper. Applicants point out that under MPEP §803, there are two criteria for a proper requirement for restriction, namely: (1) the invention must be independent and distinct; AND (2) there must be serious burden on the Examiner for restriction to be required (Emphasis Added).

Applicants respectfully contend that the second requirement of MPEP §803 has not been met. A search of the prior art in connection with methods for treating bacterial infection using polypeptides also yield prior art relating to the polypeptides themselves (e.g., Group 2), to a method of preventing and treating a contamination (i.e., Group 5), and to a contact lens coated with the polypeptide (i.e., Group 6). Thus, search of the art with regard to the invention of Groups 1, 2, 5 and 6 would not place an undue burden on the Examiner. Moreover, separate prosecution of these claims would be unnecessarily duplicative and thus wasteful of Patent Office resources. Therefore, under MPEP §803, the instant claims do not require restriction.

Moreover, Applicants respectfully remind Examiner that unity of invention (not restriction practice pursuant to 37 CFR 1.141 - 1.146) is applicable in national stage applications submitted under 35 U.S.C. 371. MPEP § 1893.03(d). The present application is the national stage application of PCT/GB05/00769. As evidenced by the International Preliminary Report on Patentability issued on August 30, 2006, no objections were made with regard to a lack of unity of invention.

Applicants respectfully request that the Examiner reconsider and withdraw the Restriction Requirement as to these claims.

Traversal for Species Election

The foregoing election notwithstanding, Applicants respectfully traverse the species election and submit that it is improper. Examiner cites 35 U.S.C. § 121 as the basis for the restriction requirement, yet that section permits restriction only when a) inventions are independent or distinct, and b) there is a serious burden on the Examiner. MPEP §803.

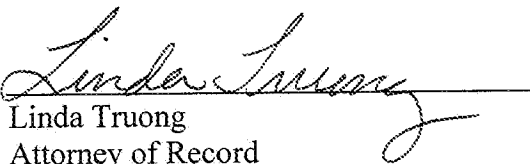
Each embodiment of the Applicant's invention described in the species above is directed using polypeptides to treat bacterial infection. Applicants contend that the species election

should be withdrawn because a search of the prior art for methods of treating bacterial infections using polypeptides with a tandem repeat of "RKR" should reveal whether any prior art exists as to all of the species. Therefore, there is no serious burden on the Examiner.

Furthermore, Applicants submit that the Examiner has improperly set forth "subgenera" of the invention. The pending claims uses "comprising" language with respect to the composition and the peptide. The Examiner, without basis, has required Applicants to elect between one and only one polypeptide and two or more polypeptides. The language of the claim clearly allows for both, and Applicants' election of one polypeptide is not to be interpreted as limiting the scope of the claims. Further, the composition clearly allows for the composition to comprise the polypeptide or the composition to comprise other compounds in the composition. Applicants' election of G3 is not to be interpreted as limiting the scope of the claims. Additionally, Examiner's requirement that a specific and fully defined polypeptide is elected without open-ended language is similarly unduly restrictive. Applicants' election of WRKWRKRWWRKWRKRWW (SEQ ID NO. 7) is not to be interpreted as limiting the scope of the claims.

All of the claims in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,
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